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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH HARRIS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0612-CR-1134
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Priscilla Fossum, Judge Pro Tempore
Cause No. 49G05-0512-FB-206416

JUNE 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Kenneth Harris (“Harris”) brings this direct appeal after entering a guilty plea to the Class B felony of robbery, the Class C felony of carrying a handgun without a license, and a habitual offender enhancement. The trial court sentenced Harris to the advisory sentence of ten years on the Class B felony and enhanced that sentence by fifteen years on the habitual offender count. The advisory sentence of four years on the carrying a handgun without a license count was to be served concurrently with the sentence for the Class B felony.

We affirm.

ISSUE

Harris states the issue as whether the sentence was appropriate in view of the nature of the offense and the character of the offender.

FACTS

The underlying offense giving rise to this appeal is that Harris, while armed with an unlicensed gun, committed an armed robbery of a liquor store taking money from the two clerks in the store. Harris, who was a frequent customer of the liquor store, said he did the robbery because he owed a drug dealer money.

Evidence at the sentencing hearing included the testimony of one of the victims and a letter from the other. Both said the experience had lasting emotional consequences for them, and recommended a maximum sentence for Harris. A letter from Harris’ mother was introduced in which she mentioned that Harris had been in a car accident in 1993. She also

said Harris needed help in dealing with his alcohol and substance abuse. In addition, what appears to be a 1993 hospital bill was introduced into evidence. That bill indicated that Harris had been treated for a brain injury. Harris testified briefly without mentioning the car accident, and asked for mercy from the court.

The trial court's sentencing statement indicated that Harris's activity was escalating to more serious criminal behavior as time went by. The trial judge did not put much emphasis on the brain injury, because Harris had a criminal record that preceded the accident, but did give credit for his guilty pleas. The trial judge also noted that the reason for the robbery, as advanced by Harris, did not constitute a defense for his conduct. All told, the trial judge found that the aggravators and mitigators evened out. The trial court sentenced Harris to the advisory sentence for both felonies.

DISCUSSION AND DECISION

The crux of Harris' argument is that the trial court did not give significant weight to his serious head injury suffered in the auto accident; his history of mental illness; and, his willingness to take responsibility by admitting guilt.

Harris' argument is founded upon Article 7, Section 6 of the Indiana Constitution and Rule 7(B) of the Indiana Rules of Appellate Procedure. Harris's constitutional issue is waived because of the failure to make cogent argument. *See* App. R. 46(A)(8)(a).

Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions,

App. R. 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. *Purvis v. State*, 829 N.E.2d 572, 588 (Ind. Ct. App. 2005).

Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The nature of the offense portion of the standard speaks to the statutory presumptive sentence of the class of crimes to which the offense belongs. *Corbin v. State*, 840 N.E.2d 424, 432 (Ind. Ct. App. 2006). That is, the presumptive sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crime committed. *Id.* The character of the offender portion of the standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. *Id.*

In passing sentence on Harris the trial court in both instances gave the advisory sentences. The trial court found the aggravating circumstances (criminal history) and the mitigating circumstances (pleading guilty) to be equal.

Harris' history of criminal activity is indicative of his character. When evaluating the character of the offender, a trial court may consider the offender's arrest record in addition to actual convictions. *Johnson v. State*, 837 N.E.2d 209, 218 (Ind. Ct. App. 2005). Our reading of the pre-sentence investigation shows that Harris was convicted of the current offenses as well as carrying a handgun without a license (probation revoked); auto theft and resisting law enforcement (probation revoked); failure to stop after an accident (probation revoked); battery; battery (probation revoked); public intoxication; driving under the influence, public

intoxication and operating with elevated blood alcohol content (probation revoked); criminal trespass and public intoxication; and, invasion of privacy (probation revoked); misdemeanor battery, felony battery and invasion of privacy. Harris was also arrested for unlawful use of a police radio; driving while suspended; criminal trespass; reckless driving; six public intoxications; theft and auto theft; and, battery and domestic battery.

After due consideration of the nature of Harris's crime and his character we cannot say that his sentence is inappropriate.

Harris concludes his argument by citing Article 1, Section 18 of the Indiana Constitution. That section says that sentencing should be focused on rehabilitation rather than on retribution. A party cannot raise a new ground of error on appeal. *Gill v. State*, 730 N.E.2d 709, 711 (Ind. 2000). Additionally, it is doubtful that this argument is in compliance with App. R. 46(A)(8)(a).

CONCLUSION

Harris' sentence was appropriate when considered under App. R. 7(B) standards.

Affirmed.

SHARPNACK, J., and MAY, J., concur.